

Assembly Bill No. 905

Passed the Assembly September 2, 2011

Chief Clerk of the Assembly

Passed the Senate August 30, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 7100 of the Health and Safety Code, relating to disposition of remains.

LEGISLATIVE COUNSEL'S DIGEST

AB 905, Pan. Disposition of remains: authorized agent.

Existing law lists the person or persons who, in an order of succession, have the right to control, and duty of disposition of, the remains of a deceased person if other directions have not been given by the decedent. The first among the list of persons so authorized pursuant to this list is an agent under a power of attorney for health care who has the right and duty of disposition. A person upon whom the duty of interment is imposed by law who omits to perform that duty within a reasonable period of time is guilty of a misdemeanor.

This bill would specify that the designation of a person authorized to direct disposition (PADD) on a United States Department of Defense Record of Emergency Data, DD Form 93, as that form exists on December 31, 2011, or its successor form if approved by the State Registrar, shall take first priority and be used to establish an agent who has the right and duty of disposition for a decedent who died while on duty in any branch or component of the Armed Forces of the United States, as defined. This bill would provide that this provision will become operative only if the form and a specified federal statute are amended to allow a service member to designate any person, regardless of the relationship of the designee to the decedent, as the agent who has the right of disposition of a service member's remains.

This bill would incorporate additional changes in Section 7100 of the Health and Safety Code, proposed by SB 647, to be operative only if SB 647 and this bill are both chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

(1) An agent under a power of attorney for health care who has the right and duty of disposition under Division 4.7 (commencing with Section 4600) of the Probate Code, except that the agent is liable for the costs of disposition only in either of the following cases:

(A) Where the agent makes a specific agreement to pay the costs of disposition.

(B) Where, in the absence of a specific agreement, the agent makes decisions concerning disposition that incur costs, in which case the agent is liable only for the reasonable costs incurred as a result of the agent's decisions, to the extent that the decedent's estate or other appropriate fund is insufficient.

(2) The competent surviving spouse.

(3) The sole surviving competent adult child of the decedent or, if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children. However, less than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult children.

(4) The surviving competent parent or parents of the decedent. If one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.

(5) The sole surviving competent adult sibling of the decedent or, if there is more than one surviving competent adult sibling of the decedent, the majority of the surviving competent adult siblings. However, less than the majority of the surviving competent adult siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving

competent adult siblings of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult siblings.

(6) The surviving competent adult person or persons respectively in the next degrees of kinship or, if there is more than one surviving competent adult person of the same degree of kinship, the majority of those persons. Less than the majority of surviving competent adult persons of the same degree of kinship shall be vested with the rights and duties of this section if those persons have used reasonable efforts to notify all other surviving competent adult persons of the same degree of kinship of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult persons of the same degree of kinship.

(7) The public administrator when the deceased has sufficient assets.

(b) (1) If a person to whom the right of control has vested pursuant to subdivision (a) has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains and to proceed under this chapter to recover usual and customary charges for the disposition when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kinship and upon the estate of the decedent. However, if a person accepts the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(e) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(f) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

(g) For purposes of this section, “adult” means an individual who has attained 18 years of age, “child” means a natural or adopted child of the decedent, and “competent” means an individual who has not been declared incompetent by a court of law or who has been declared competent by a court of law following a declaration of incompetence.

(h) (1) For the purpose of paragraph (1) of subdivision (a), the designation of a person authorized to direct disposition (PADD) on a United States Department of Defense Record of Emergency Data, DD Form 93, as that form exists on December 31, 2011, or its successor form, shall take first priority and be used to establish an agent who has the right and duty of disposition for a decedent who died while on duty in any branch or component of the Armed Forces of the United States, as defined by Section 1481 of Title 10 of the United States Code.

(2) This subdivision shall become operative only if the United States Department of Defense Record of Emergency Data, DD Form 93, and Section 1482(c) of Title 10 of the United States Code are amended to allow a service member to designate any person, regardless of the relationship of the designee to the decedent, as the agent who has the right of disposition of a service member's remains.

SEC. 1.5. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

(1) An agent under a power of attorney for health care who has the right and duty of disposition under Division 4.7 (commencing with Section 4600) of the Probate Code, except that the agent is liable for the costs of disposition only in either of the following cases:

(A) Where the agent makes a specific agreement to pay the costs of disposition.

(B) Where, in the absence of a specific agreement, the agent makes decisions concerning disposition that incur costs, in which case the agent is liable only for the reasonable costs incurred as a result of the agent's decisions, to the extent that the decedent's estate or other appropriate fund is insufficient.

(2) The competent surviving spouse.

(3) The sole surviving competent adult child of the decedent or, if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children. However, less than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult children.

(4) The surviving competent parent or parents of the decedent. If one of the surviving competent parents is absent, the remaining

competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.

(5) The sole surviving competent adult sibling of the decedent or, if there is more than one surviving competent adult sibling of the decedent, the majority of the surviving competent adult siblings. However, less than the majority of the surviving competent adult siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult siblings of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult siblings.

(6) The surviving competent adult person or persons respectively in the next degrees of kinship or, if there is more than one surviving competent adult person of the same degree of kinship, the majority of those persons. Less than the majority of surviving competent adult persons of the same degree of kinship shall be vested with the rights and duties of this section if those persons have used reasonable efforts to notify all other surviving competent adult persons of the same degree of kinship of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult persons of the same degree of kinship.

(7) A conservator of the person appointed under Part 3 (commencing with Section 1800) of Division 4 of the Probate Code when the decedent has sufficient assets.

(8) A conservator of the estate appointed under Part 3 (commencing with Section 1800) of Division 4 of the Probate Code when the decedent has sufficient assets.

(9) The public administrator when the deceased has sufficient assets.

(b) (1) If a person to whom the right of control has vested pursuant to subdivision (a) has been charged with first- or second-degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first- or second-degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains and to proceed under this chapter to recover usual and customary charges for the disposition when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (8), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (8), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kinship and upon the estate of the decedent. However, if a person accepts the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(e) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(f) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

(g) For purposes of this section, “adult” means an individual who has attained 18 years of age, “child” means a natural or adopted child of the decedent, and “competent” means an individual who has not been declared incompetent by a court of law or who has been declared competent by a court of law following a declaration of incompetence.

(h) (1) For the purpose of paragraph (1) of subdivision (a), the designation of a person authorized to direct disposition (PADD) on a United States Department of Defense Record of Emergency Data, DD Form 93, as that form exists on December 31, 2011, or its successor form, shall take first priority and be used to establish an agent who has the right and duty of disposition for a decedent who died while on duty in any branch or component of the Armed Forces of the United States, as defined by Section 1481 of Title 10 of the United States Code.

(2) This subdivision shall become operative only if the United States Department of Defense Record of Emergency Data, DD Form 93, and Section 1482(c) of Title 10 of the United States Code are amended to allow a service member to designate any person, regardless of the relationship of the designee to the decedent, as the agent who has the right of disposition of a service member’s remains.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 7100 of the Health and Safety Code proposed by both this bill and Senate Bill 647. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 7100 of the Health and Safety Code, and (3) this bill is enacted after Senate Bill 647, in which case Section 1 of this bill shall not become operative.

Approved _____, 2011

Governor